IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5490 OF 2004

Bhaskar Shivram More & ors. Petitioners

versus

Bharat Sahebrao Shinde & ors. Respondents

Shri S.M.Sabrad for petitioners.

Shri M.S.Karnik for respondents 1,2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. Heard Shri Sabrad appearing for petitioners and Shri Karnik for respondents 1 and 2.

2. With the assistance of Shri Sabrad I have perused the orders passed by the Mamlatdar as also the Sub Divisional Officer, Niphad Sub Division.

3. The nature of the dispute being right of way from the land belonging to respondents 1 and 2 and access therefrom to the petitioners land, it

is not disputed by Shri Sabrad that the Mamlatdar lacked inherent jurisdiction to entertain such a dispute. He agrees that the remedy of the parties is to approach the Competent Civil Court.

4. The apprehension of Shri Sabrad that the observations made on merits by the SDO, Niphad would influence the Civil Court in considering the request made by the petitioners in the civil suit, is not well founded because the Mamlatdar having lacked jurisdiction to take cognizance of said dispute, the revision application directed against his order ought to have been disposed of on this short ground alone and observations contained therein are academic. In any event, a suit on title being always maintainable so also a request therein for right of way and access being also maintainable, the findings recorded in the order of SDO, Niphad can never influence the Civil Court, while, either trying the suit or passing such interlocutory orders as are necessary in the interest of justice. Petition dismissed subject to this clarification.

(S.C.DHARMADHIKARI, J.)